IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10559 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALL INDIA SAAFAI MAZDOOR CONGRESS & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS ARCHANA AMIN for MR MK VAKHARIA for Petitioner No(s).: 1,2.
MR IM PANDYA A.G.P. for Respondent No(s).: 1, 2,3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/08/2005

ORAL JUDGMENT

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1.0. The petitioners by way of this petition have prayed to quash and set aside the Notification dated 20th October, 1999 at annexure-A to the petition, whereby the respondent no. 2 directed the Municipalities that they

can retain only 10% more daily wagers than the sanctioned posts in the set up and it was further directed that if there are any excess daily wagers, they should be retrenched at the earliest.

2.0. The short facts of the case are that the petitioner no. 1 is a registered Trade Union wherein approximately 4800 members are working as daily wagers in different Nagar Palikas. It is the case of the petitioner Union that the said members have put in services ranging from one year to twenty five years. According to the petitioners the State Government issued Notification dated 12th June, 1978, whereby the Municipalities were directed not to retain more than 10% daily wagers than the sanctioned set up.

2.1. The grievance of the petitioners is that if the aforesaid Notification is implemented, the members of the first petitioner Union, who have already put in services ranging from one year to twenty five years will be rendered jobless without following any procedure under the law. Hence, this petition.

3.0. Ms. Archana Amin learned advocate for the

petitioners has contended that in spite of the fact that there is sharp increase in the population and the area of the municipalities as well as the duties and functions of the municipalities, the respondents continued with the same set up which was framed 25 years ago. According to the learned counsel, though the members of the first petitioner Union have put in more than 240 days of continuous services up to 25 years, their services have not been regularized and their services cannot be terminated merely by issuing a Notification.

3.1. Ms. Amin has contended that the said Notification is issued under the provisions of Gujarat Municipalities Act and the Notification of the State Government cannot over-ride the statutory provisions of the Industrial Disputes Act, 1947. Ms. Amin has further contended that the State Government, before issuing such Notification, has neither given opportunity of hearing to the members of the petitioner Union nor any objections were invited by the State Government.

4.0. In support of the impugned Notification Mr. I. M. Pandya learned A.G.P., has submitted that under the provisions of the Gujarat Municipalities Act, the

Government is empowered to issue such guidelines. He has further submitted that in view of the provisions of Section 114 of the Gujarat Municipalities Act, the State Government is empowered to grant sanction to the Municipalities and frame Rules for Recruitment of the officers and staff. According to him, in view of uncontrolled employment of daily rated employees by the municipalities, the financial position of the municipalities and also the quality of services rendered by them are affected, as a result of which the Government was required to issue the Notification. Mr. Pandya had defended the Notification by taking support of the affidavit-in-reply filed in these proceedings.

5.0. As a result of hearing and perusal of the record, I am of the view that the Notification at Annexure-A has been issued without proper application of mind and without having any authority under the law.

5.1. Firstly, the Notification did not refer to any provisions of the Gujarat Municipalities Act, nor any other Act. Secondly, the respondents are unable to show that they have power to issue such a Notification without taking into consideration other relevant provisions of

the Act. In the affidavit-in-reply, it is stated that under the provisions of the Gujarat Municipalities Act, 1963, the Government is empowered to issue guidelines with regard to appointment of staff. However, a perusal of the impugned Notification shows that the directions issued therein are not merely guidelines. It categorically specified that from the date of the said Notification, the concerned authorities are required to follow the said instructions. It would mean that irrespective of the fact whether an employee has put in more than one year service or not, he will not be continued in service.

5.2. It is required to be noted that the earlier Notification dated 12th Jun, 1998 specifies the condition of not having 10% more than the set up of staff. Thereafter over the years there is sharp increase in the population and the area of the municipalities were also extended further which required more manpower.

5.3. It is also the practice of the Director of the Municipalities not to sanction the required posts for a long period. Obviously, therefore, the Nagarpalikas recruited persons on daily wage basis from time to time

in order to meet with the daily requirements and to fulfill the obligations of the Nagarpalikas. Thus, such employees have continued for a very long time.

5.4. The second Notification has been issued after a period of 25 years, on the same basis which is obviously without application of mind and without taking into consideration of the aforesaid facts and circumstances of the case. Though Mr. Pandya learned A.G.P., has tried to defend the Notification taking support of the affidavit-in-reply filed in these proceedings, it is clear that the Notification has been issued without referring to the provisions of any law.

5.5 In the case of **Commissioner of Police, Bombay v. Gordhandas Bhanji reported in A.I.R. (39) 1952 S.C. pg. 16**, it has been held that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed

objectively with reference to the language used in the order itself. Similar view has been adopted by the Apex Court in the case of **Mohinder Singh Gill & Anr., v. The Chief Election Commissioner reported in A.I.R. 1975 S.C. p. 851,** wherein it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge gets validated by additional grounds later brought out.

6.0. The specific case of the petitioners is that their members have put in more than 240 days of continuous service ranging upto 25 years. Therefore, if by the said Notification, such employees have been terminated, it would violate their fundamental rights and rights under various provisions of the Act.

6.1. On the facts of the case, I am of the opinion that the respondents have allowed to crystalise the rights of the employees for a very long time and decided to unsettle the same merely by issuing a Notification

permitted without following proper procedure. Moreover, if the impugned Notification is allowed to stand, it would have the effect of over-riding the statutory provisions, especially the provisions of Industrial Disputes Act.

6.2. It is clear that the respondents are trying to wriggle out of the problem created by the authorities themselves without resorting to the statutory provisions. Apart from that, such Notification will have far reaching effect on the employment of many persons even though they were working more than 240 days. I am, therefore, of the clear opinion that the impugned Notification is illegal, arbitrary and requires to be quashed and set aside.

7.0. In the premises aforesaid, the petition is allowed. The Notification dated 20th October, 1999 at annexure-A to the petition is quashed and set aside.

7.1. However, the prayer with regard to absorption in service cannot be granted by this Court as the same will have to be considered by the respondents looking to the existing vacancies and the services put in by the concerned employee. Accordingly the concerned respondents

shall direct the Nagar Palikas to look into the matter and to absorb such persons in service in accordance with law looking to the number of permanent vacancy and the services put in by the concerned employee. Rule is made absolute to the aforesaid extent.

8. This matter has been adjourned from time to time at the instance of the respondents. Even though the respondents were required to produce on record the subsequent events and the last Circular issued on the subject matter by the Government, no such details were brought on record even though sufficient time was granted by adjourning the matter for the said purpose.

8.1. Ultimately this Court was constrained to pass the present order on the basis of the materials available on record. Apart from that the Notification has been issued without referring to any provisions of law. Under the circumstances, the respondents shall pay an amount of Rs.10,000=00 by way of costs to the petitioners.

[K.S. JHAVERI, J.]

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